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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

_____	)	Case No. C 10-03561-WHA
ORACLE AMERICA, INC.	)	
	)	<b>RESPONSE OF DR. JAMES R.</b>
Plaintiff,	)	<b>KEARL, RULE 706 EXPERT, TO</b>
	)	<b>GOOGLE'S RESPONSE TO</b>
v.	)	<b>ORACLE'S MOTION IN LIMINE #6</b>
	)	<b>REGARDING RULE 706 EXPERT,</b>
GOOGLE, INC.	)	<b>PROFESSOR JAMES KEARL</b>
	)	
Defendant.	)	Date: April 27, 2016 at 8:00 am
_____	)	Dept.: Courtroom 8, 19th Floor
	)	Judge: Honorable William H. Alsup

Filed: April 13, 2016

I file this reply to Google's Response to Oracle's Motion in Limine #6 Regarding Rule 706 Expert, Professor James Kearl, dated April 8, 2016 only for the purpose of clarifying the record.

In its motion Google quotes from a report I filed in 2012 in the first phase of this case. Google implies that it is my opinion that there is no "quantitative method to estimate the percent of Android revenue or profit that is due to the alleged copyright infringement."<sup>1</sup> The quote from my report is incomplete. The complete quote is: "Based on the admissible evidence in this matter, I am not aware of a quantitative method to estimate the percent of Android revenue or profit that is due to the alleged copyright infringement."<sup>2</sup> The omitted phrase ("Based on the admissible evidence in this matter") is critical to the opinion that I expressed at that time because parts of Dr. Shugan's and Dr. Cockburn's analyses for estimating changes in Android market shares had been stricken, and there were no alternative methodologies put forth by any of the damages experts from either side for directly estimating the percent of Android revenue or profit due to the copyright infringement. In this phase of the litigation, however, we have Dr. Leonard's approach that relies on the Kim econometric model which he (and I) use to estimate changes in Android market shares.<sup>3</sup>

My statement in 2012 was not a generalizable opinion that there is no theoretical or potentially practical way to estimate the percent of Android revenue or profit that is attributable to the alleged copyright infringement in this matter, but was specific to what remained of the methodologies of the parties'

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<sup>1</sup> Google's Response to Oracle's Motion in Limine #6 Regarding Rule 706 Expert, Professor James Kearl (Dkt. 1623-1), p. 1.

<sup>2</sup> Expert Report of Professor James R. Kearl, March 21, 2012 (Exhibit A to Declaration of Dr. James R. Kearl in Support of Response of Dr. James R. Kearl, Rule 706 Expert, to Google's Response to Oracle's Motion in Limine #6 Regarding Rule 706 Expert, Professor James R. Kearl), ¶ 124.

<sup>3</sup> Expert Report of Dr. Gregory K. Leonard, Corrected March 10, 2016 (Exhibit B to Declaration of Dr. James R. Kearl in Support of Response of Dr. James R. Kearl, Rule 706 Expert, to Google's Response to Oracle's Motion in Limine #6 Regarding Rule 706 Expert, Professor James R. Kearl), ¶¶ 185-196. See also Expert Report of Professor James R. Kearl, corrected March 21, 2016 (Exhibit C to Declaration of Dr. James R. Kearl in Support of Response of Dr. James R. Kearl, Rule 706 Expert, to Google's Response to Oracle's Motion in Limine #6 Regarding Rule 706 Expert, Professor James R. Kearl), §8.1.4 and Exhibit 4h.

April 13, 2016

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damages experts in the first phase of this litigation after the Court had made specific MIL and Daubert rulings.

Respectfully submitted this 13<sup>th</sup> day of April, 2016

*/s/ James R. Kearl*

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J.R. Kearl